UNITED NATIONS

SECRETARIAT

ST

Distr.
GENERAL

ST/SOA/118/Add.3
8 May 1973

ORIGINAL: ENGLISH/FRENCH

CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations Secretariat

Addendum

INFORMATION RECEIVED FROM GOVERNMENTS

Botswana

[Original: English]
[7 March 1973]

In the Republic of Botswana, where a person is charged with murder which by law carries a death sentence, such a person, if he is unable himself, is automatically entitled to a legal counsel who is provided and paid by the State. Murder cases are tried by the High Court and in the event of conviction there is an automatic right of appeal to the Court of Appeals.

Where the Court of Appeals upholds the death sentence, the sentence shall not be carried out until the case is reported to the President of the Republic to enable him, if he deems fit, to exercise the prerogative of mercy. In exercising this function, the President is assisted by the Advisory Council of the Prerogative of Mercy. There is thus adequate safeguard for persons who are condemned to death.

Ivory Coast

[Original: French]
[22 February 1973]

Depuis son accession à l'indépendance, la Côte d'Ivoire n'a procédé à l'exécution d'aucune peine capitale.

La procédure pénale en vigueur en Côte d'Ivoire prévoit:

1. Un recours devant la Cour Suprême contre l'arrêt de la Cour d'assisses ayant prononcé la condamnation à mort ou un recours en grâce devant le Chef de l'Etat qui se prononce après avis de la Commission Supérieure des grâces.

2. Ces recours sont suspensifs.

3. La décision de condamnation ne peut intervenir qu'après un débat judiciaire au cours duquel l'accusé à eu tout loisir de se défendre soit par ses propres moyens, soit lorsqu'il s'agit d'un indigent, avec l'assistance d'un Conseil désigné d'office.

Laos

[Original: French]
[13 February 1973]

L'article II du Code Pénal Lao, modifié par l'Ordonnance Loi No. 237 du 12 août 1965 stipule:

"Qu'aucune exécution capitale ne pourra avoir lieu toutefois qu'après l'approbation de la condamnation par le Roi."

Il en résulte que tout arrêt de condamnation à mort ainsi que le dossier de l'affaire doivent être soumis à sa Majesté le Roi qui exerce souverainement son droit de grâce et de commutation des peines.

Cette procédure n'entraîne aucun frais pour le condamné.

Malaysia

[Original: English]
[8 February 1973]

Legal safeguards

Whilst the death sentence may still be retained in Malaysia, it exists only for the gravest offences like murder and treason. Malaysia is aware of the present trend towards the restriction or total abolition of the death penalty in other countries; but it is not possible to completely do away with the death penalty for a number of reasons - one of which is the question of a suitable alternative penalty for the offence.

However, the sharp drop in the death sentence carried out over the last half-decade as compared to the five years preceding that reflects clearly that the Courts have exercised their discretion in favour of a non-death sentence and that many have received pardons.

Apart from this practice by the courts the law has built into its criminal justice system legal safeguards as are described below for the person charged with a capital offence.

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(i) Right to appeal and to pardon

The right to appeal is accorded to the accused by filing a notice of appeal within the prescribed period.

Where notice of appeal is not so filed then the Judge passing the sentence shall submit the notes and recommendations in connexion with the proceedings to the Menteri Besar who shall in turn communicate the matter to the Ruler who will make such order as he thinks fit which may be a pardon or commutation of sentence or if execution then the time and place of execution.

The provision governing the execution of sentences is s.281 of the Criminal Procedure Code (F.M.S.Cap.6). The relevant part reads:

281. With regard to sentences of death the following provisions shall be followed.

(a) After sentence has been pronounced a warrant, under the seal of the Court, shall be made out for the commitment of the person sentenced to the custody of the officer in charge of the district prison, and such warrant shall be full authority to the said officer, or any officer appointed by him for that purpose, for receiving into his custody and detaining the person so sentenced until the further warrant or order of the Court,

(b) (i) In cases in which notice of appeal is not given within the prescribed period, the Judge passing sentence of death shall, as soon as conveniently may be after such period has elapsed, forward to the Menteri Besar of the State in which the crime was committed, a copy of the notes of evidence taken on the trial, together with a report in writing signed by him, setting out his opinion whether there are any reasons, and, if any, what reasons there are, why the sentence of death should or should not be carried out;

(ii) In cases in which notice of appeal is given the Judge who passed sentence of death shall, as soon as conveniently may be, forward to the Federal Court the report in writing referred to in clause (i) of this paragraph; and, if the Federal Court dismisses the appeal, the Judge presiding in such Court shall as soon as conveniently may be after such dismissal forward to the aforesaid Menteri Besar the said report in writing together with a copy of the notes of evidence taken at the original trial, a copy of the record of the proceedings before the Federal Court and also such report, if any, on the case as the Federal Court may think fit to make signed by the Judge presiding in the Federal Court;

(c) The Menteri Besar shall, upon receipt of the proceedings, submit the same to the Ruler of the State and shall communicate to the Court of the Judge passing sentence a copy under his hand and seal of any order the Ruler of the State may, acting in accordance with the provisions of Article 42 of the Constitution, make thereon, shall state the place where the execution is to be held, and if the sentence is commuted into any other punishment shall so state; and if the person sentenced is pardoned shall so state;

(d) (i) On receiving the copy of the said order the Court shall cause the effect of the same to be entered in the records of the Court, and the said order directs the sentence to be carried out shall appoint the time when it is to be carried out and shall endorse the time so appointed upon the said order, and shall in all cases cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary;

(ii) The Ruler of the State acting in accordance with the provisions of article 42 of the Constitution may order a respite of the execution of the warrant and afterwards appoint some other time or other place for its execution;

(iii) The warrant shall be directed to the officer in charge of the prison for the district where the sentence is to be carried into effect, who shall carry the sentence into effect, in accordance with law;

(ii) Right to counsel

Counsel is assigned to each and every accused in a capital case, and at all stages of the proceedings. In ordinary law and special law an experienced lawyer is assigned by the high court and in court martial the accused may have a lawyer of his own choice.

(iii) Time-limit as the execution of death sentence

Although no time-limit is fixed, s.281(CPC) clearly indicates that the execution must be at a time and place fixed by the Order of the Yang Dipertuan Agung or Ruler or Governor of a State, after the case has been referred to him.

Attitude to possible further restriction of the sentence of death penalty

Malaysia is keeping an open mind about the death penalty. The present trend in court practice shows that Malaysia may do away with the death penalty when circumstances permit.

Union of Soviet Socialist Republics

[Original: Russian]
[28 March 1973]

In cases involving crimes for which an exceptional penalty may be applied, the court holds a preliminary hearing at which, without prejudging the question of guilt, it decides whether the case should go to trial, be referred for further investigation or be dropped and also rules on the question of remain in custody.

The legal requirement of a preliminary hearing is an important means of ensuring that the accused is ordered to stand trial only when such action is warranted.

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Soviet law not only enables defence counsel to participate in any criminal proceedings but requires him to participate in certain types of cases, including those involving crimes for which the death penalty may be imposed. If defence counsel is not appointed by the accused, his legal representative or some other person acting on his instructions, the investigating officer, the public prosecutor or the court must ensure participation by counsel in the case regardless of the ability of the accused to pay for the services of a lawyer.

A decision of a regional or territorial court or of the Supreme Court of an Autonomous Republic imposing an exceptional penalty may be appealed by the defendant, his counsel or his legal representative and also by the injured party. The public prosecutor is required to file an appeal against any illegal or unjustified sentence. Such appeals must be heard by a higher court.

Any appeal against a sentence stays execution of the sentence.

If the higher court lets the sentence stand, the sentence is considered to have become final.

However, the legislation of the USSR and the Union Republics permits the public prosecutor, the President of the court and their deputies to petition for judicial review of even a final sentence on the grounds of procedural irregularity or the discovery of new evidence. They may, in such cases, stay execution of the sentence until it has been reviewed.

Any convicted defendant may petition for a pardon, in which case the sentence may not be executed until his petition is heard.

The question of the applicability of statutory limitations in cases involving crimes for which the law permits imposition of the death penalty is decided by the court. If the court finds that statutory limitations do not apply, a term of imprisonment must be imposed in place of the death penalty.

The Decision of 30 June 1969 of the Plenum of the Supreme Court of the USSR concerning judicial sentences provides courts with the following guideline: "In deciding whether to impose an exceptional penalty - the death penalty - courts must bear in mind that the imposition of such penalties in the cases provided for by law is permissible only when it is necessary because of special aggravating circumstances in connexion with the crime and because the defendant presents an extreme danger to society."